

### REMARKS

Claims 1-8 and 10-22 are pending in this application. In the Office Action, claims 3, 4 and 10-22 were withdrawn from consideration as being directed to a non-elected invention; and claims 1, 2 and 5-9 are rejected under art. By this Amendment, claim 9 is canceled without prejudice to or disclaimer of the subject matter contained therein; and claims 1 and 5 are amended. Reconsideration and allowance of the application are respectfully requested.

### Objections to the Drawings

The Office Action objected to the drawings under 37 CFR §1.83(a) for failing to show the feature of “lower electrode height and first metal thickness being substantially identical”. Applicants respectfully traverse the objection.

In particular, Figs. 2, 3d-3f and 4b-4d clearly depict the height of the lower electrode 126 being *substantially* identical to the first metal wire 122 (e.g., the height of the lower electrode 122 commences at the lower surface of the first layer 120 up to the upper surface of the lower layer 124a of the second layer 124, and the thickness of the metal wiring 122 commences at the lower surface of first layer 120 up to the lower layer 124a of the second layer 124). Although Applicants acknowledge that the height of the lower electrode and thickness of the first metal thickness may not be identical, it is submitted that claim 1 recites that the comparison is merely “substantially” identical which may indicate similar interpretations, such as “approximately”, “almost” and/or “not exact”. Thus, the drawings, particularly Figs. 2, 3d-3f and 4b-4d clearly depict the dimension of the lower electrode and first metal. Reconsideration and withdrawal of the rejection are respectfully requested.

**Objection to the Specification**

The Office Action objected to the title as being non-descriptive. Although Applicants submit that the title may be described in broader terms, the title has been amended to obviate the objection. Withdrawal of the rejection is respectfully requested.

**Claim Rejections – 35 U.S.C. §112**

The Office Action rejected claims 1-2 and 5-9 under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out that they distinctly point the subject matter which Applicants regard of the invention. In particular, the Examiner found the height of the lower electrode and the thickness of the first metal to be unclear and which element relates to the lower electrode height.

Applicants submit that element 126 pertains to the lower electrode (as shown in Fig. 2), for example, whereby the height of the lower electrode commences at the lower surface of the first layer 120 up to the upper surface of the lower layer 124a of the second layer 124, and the thickness of the metal wiring 122 commences at the lower surface of first layer 120 up to the lower layer 124a of the second layer 124. By such an example, Applicants submit that the lower electrode and the first metal have *substantially* the same height. Support for this feature can be found, for example, in paragraphs [0021], [0044] and [0049].

Reconsideration and withdrawal of the rejection are respectfully requested.

**Claim Rejections – 35 U.S.C. §103**

Claims 1, 2 and 5-9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Okumura et al. (hereinafter “Okumura”), U.S. Patent No. 6,163,046. The rejection is respectfully traversed.

Applicants submit that Okumura fails to disclose or suggest, *inter alia*, “an insulating interlayer includes a first sublayer formed on the first metal wiring and a second sublayer formed on the capacitor, the first metal wiring and the first sublayer”, as recited in claim 1.

Instead, Okumura discloses an interlayer insulating film 20 formed with only a single layer (see Fig. 10A and 10B), whereas Applicants’ claim 1 recites that the insulating interlayer includes a first sublayer (124a) and a second sublayer (124b).

Further, because Okumura fails to teach an insulating interlayer having a first sublayer and a second sublayer, Okumura cannot disclose or suggest “the second sublayer including a lower layer that is formed between the upper electrode and the first metal wiring, and an upper layer that is formed over the upper electrode”, as recited in claim 1.

Accordingly, Okumura fails to disclose or suggest “an insulating interlayer includes a first sublayer formed on the first metal wiring and a second sublayer formed on the capacitor, the first metal wiring and the first sublayer, the second sublayer including a lower layer that is formed between the upper electrode and the first metal wiring, and an upper layer that is formed over the upper electrode”, as recited in claim 1.

For at least these reasons, Applicants respectfully submit that Okumura fails to disclose or render obvious the features recited in independent claim 1. Claims 2 and 5-8, which depend from independent claim 1 are likewise distinguished over the applied art at

least for the reasons discussed as well as for the additional features they recite. Reconsideration and withdrawal of the rejection are respectfully requested.

CONCLUSION

Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of claims 1-8 and 10-22 in connection with the present application is earnestly solicited.


Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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